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C O N F I D E N T I A L SECTION 01 OF 02 BEIJING 006234

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TAGS: PREL TW CH

SUBJECT: BEIJING LEGAL SCHOLAR ALLEGES DPP UN REFERENDUM EQUIVALENT TO DECLARATION OF INDEPENDENCE

REF: A. :(A) BEIJING 5888

- 1B. (B) BEIJING 5326
- 1C. (C) BEIJING 4813
- 1D. (D) SHANGHAI 601
- 1E. (E) GUANGZHOU 1051
- 1F. (F) TAIPEI 2116

Classified By: Ambassador Clark T. Randt, Jr. for reasons 1.4 (b/d)

SUMMARY

11. (C) A Chinese legal scholar and National People's Congress (NPC) adviser specializing in Chinese constitutional issues, Wang Zhenmin (protect), alleged that passage of a Taiwan Democratic Progressive Party (DPP) referendum endorsing UN membership "in the name of Taiwan" would be legally equivalent to a Taiwan declaration of independence, noting that China's reaction to such a clear violation of its "red line" is unpredictable. A rival Kuomintang (KMT) referendum does not raise the same concerns. Many in China fear the DPP referendum has a strong chance of passage. "Responsible officials" in China, Taiwan and the United States need to work to avoid a situation that might lead China to overreact "disastrously." END SUMMARY.

DPP's Referendum = Independence Declaration ...

12. (C) Wang Zhenmin, Vice Dean of Tsinghua University Law School, told Poloff on September 14 that passage of a DPP-sponsored referendum endorsing UN membership "in the name of Taiwan" would be legally equivalent to Taiwan's declaring independence. Though the referendum would have no real effect on Taiwan's bid to join the UN, the DPP referendum text, specifically the phrase "in the name of Taiwan," would materially change Taiwan's constitutional basis. Passage of the DPP referendum would change Taiwan legally from a province in a state (i.e., the Republic of China), whose constitution was previously promulgated in mainland China (i.e., in Nanjing), to a separate nation. He said Taiwan's 2003 Referendum Law stipulates that, once passed, the provisions of a referendum have the force of law and supersede other constitutional provisions. In short, passage of the DPP-sponsored referendum would clearly contravene China's Anti-Secession Law and "cross China's red line."

... KMT's Does Not

13. (C) Wang said that the Chinese Government had carefully avoided criticism of the KMT's rival referendum proposal to "reenter" the UN under the name of the Republic of China. Obviously, China is not happy about any Taiwan attempt to

join the UN, but "routine" annual efforts to rejoin as the "Republic of China" clearly do not change the status quo or cross China's red line. Wang was pessimistic about the chances of the KMT and DPP agreeing on a joint referendum proposal that would strip out the offending words "in the name of Taiwan." The KMT has little incentive to agree on a joint referendum proposal, which would only motivate the pan-Green electorate during the general election. In theory, Taiwan's referendum commission might void a referendum proposal, but with membership stacked in favor of the DPP, such a result is unlikely, Wang said. The only plausible "positive scenario," he said, would be if both camps agree to withdraw their referendum proposals.

Prospects in Taiwan

¶4. (C) Wang believes it is important that the referendum proposal be withdrawn because, notwithstanding the common wisdom in Taiwan, many in China fear the DPP referendum has a good chance of passage. Wang has close ties with the Taiwan legal community, has visited Taiwan three times and often receives Taiwan guests in China. As recently as mid-September, his Taiwan contacts had assured him that passage of the DPP referendum was very unlikely. However, Wang said reading the political tea leaves in Taiwan is difficult and many in China are still concerned. The "simple math" (i.e., very high poll numbers in support of Taiwan's entry into the UN combined with a motivated pan-Green electorate likely to turn out in force) make passage a possibility, according to the views of many in China.

Chinese Response "Unpredictable"

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¶5. (C) Wang speculated that over the next month or two China's reaction to the referendum issue would be relatively restrained. He predicted that President Hu Jintao would not make extraordinarily strong statements at the upcoming 17th Chinese Communist Party Congress, though military representatives to the Congress might make bellicose remarks. Nor would China introduce new resolutions at the UN. Interestingly, Wang said that in internal meetings some People's Liberation Army (PLA) representatives counsel relative restraint in PRC public statements. "Some in the military," Wang said, "say to give Taiwan an implicit green light, since passage of the referendum would give China a perfect pretext for strong action against Taiwan." Wang called this view "irresponsible."

U.S. Role

¶6. (C) Wang applauded Deputy Secretary Negroponte's recent remarks on Hong Kong's Phoenix television channel opposing Taiwan's holding of a UN referendum. He said that the United States had been helpful in dampening the issue at the United Nations as well. (Wang said he has seen DAS Christensen's speech but did not comment on it specifically.) Wang asserted that nonetheless most U.S. observers underestimate the significance of the referendum issue. He urged the U.S. Government to view passage of the referendum as an extremely destabilizing act equivalent to Taiwan's declaring independence. He said it was the duty of responsible officials in China, Taiwan and the United States to use their influence to avoid a situation leading to a Chinese "overreaction," which would be disastrous for both sides of the Taiwan Strait.

Comment

¶7. (C) Wang is a respected legal scholar with many contacts in Taiwan, Hong Kong and the United States and does not

appear by nature a hard-liner. He, for example, acknowledges the need to manage Chinese "hawks" on Taiwan, whose actions might cause harm to China itself. However, Wang's interpretation of the legal issues surrounding the referendum lead him to a conclusion similar to the tough views previously put forth by the Taiwan Affairs Office (TAO) and some PLA-affiliated scholars with whom post has previously spoken. In contrast, other Chinese contacts, while stressing the dangers of the referendum, nevertheless recently argued that, as a political issue, it was unlikely to cross Beijing's "red line" (Refs A-C). These contacts did note, however, that there are "other voices" in China who view the referendum more starkly, and Wang appears to be representative of such views.

Randt